

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-232-W - ORDER NO. 97-38
JANUARY 8, 1997

IN RE: Concerned Citizens Against)	
Carolina Water, Inc.,)	
Complainant,)	
)	
vs.)	ORDER
)	
Carolina Water Service, Inc.)	
Respondent.)	
)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") pursuant to Commission Orders No. 96-524, 96-580, and 95-589. Originally, this Docket was opened in response to a Complaint filed by Concerned Citizens Against Carolina Water, Inc. ("CCACW") against Carolina Water Services, Inc. ("CWS" or "the Company") on July 9, 1996. The Complaint alleged, amongst other items, that CWS had improperly imposed a mandatory curtailment of outside water usage on the CWS service area located in Lexington County known as the "I-20 area" or the "I-20 system." Three wells in the I-20 area were out of service, and the customers were reportedly experiencing low pressure and shortage situations. The I-20 system serves nearly 5,000 people by the use of thirty wells and storage facilities.

In response to the Complaint and due to the urgency of the situation, the Commission issued Order No. 96-454 on July 10, 1996, which was ratified by the full Commission on July 16, 1996,

that established a hearing for the Commission to examine the allegations of the Complaint and hear testimony regarding the circumstances of the curtailment. Such hearing was held on July 17, 1996. Brenda Bryant and fourteen (14) public witnesses testified. Mr. Keith Murphy, CWS Regional Director, Mr. Larry Boland of the South Carolina Department of Health and Environmental Control ("DHEC"), and Mr. Charles Creech of the Commission Staff ("Staff") also presented testimony at that hearing. The Commission learned at the hearing that CWS and the City of West Columbia ("West Columbia") had entered into a temporary interconnection agreement by which CWS's I-20 system "tapped on" to the West Columbia water system via a two inch interconnection line on or about July 3, 1996.

Subsequent to that hearing, upon consideration, the Commission issued Order No. 96-487. In Order No. 96-487, the Commission ordered in part (1) that CWS cease the mandatory curtailment in effect at that time and that I-20 area customers restrict their outside water usage; (2) that CWS, the Commission Staff and the Department of Health and Environmental Control formulate a plan of action to alleviate future shortages and that the plan be presented to the Commission at the next scheduled meeting; and (3) that Staff would investigate the institution of proceedings to pursue CWS's water bond ("bond") on file with the Commission. The Commission specifically found CWS at fault for failing to take action in response to and in compliance with DHEC's requests pertaining to the three wells that were out of service in the I-20 area, and that such failures contributed to

the emergency shortage in late June and early July of 1996.

In response to the Order, CWS filed its plan on July 29, 1996. The plan contained the following four options for potential alleviation of future shortages in the I-20 service area: (1) replacement of the filter media in the existing I-20 filters of Springlake wells #2, 4, and 5, which were then out of service, in approximately one week after DHEC's approval was obtained and at an approximate cost of \$75,000; (2) replacement of the filters for the I-20 Springlake wells #2, 4, and 5 in approximately 10 to 12 weeks at an approximate cost of \$151,368; (3) drilling and installation of new wells in the I-20 area at an approximate cost of \$400,000; or (4) continuing to pursue an agreement for CWS to purchase water from a bulk provider (another utility or municipality).

The Commission then reviewed the plan and the service area's situation and issued Order No. 96-524 on August 1, 1996. In that Order, this Commission ordered CWS to take immediate steps to provide adequate service through the purchase of water from a utility or municipality in order to alleviate present shortages and prevent future shortages (emphasis added). Such an interconnection would provide a dependable water supply expeditiously. Staff was instructed to initiate a proceeding, by giving notice, to determine whether the Company had willfully failed to provide adequate and sufficient service without just cause and excuse and whether such failure continued for an unreasonable length of time. The potential outcome of this proceeding was the possible forfeiture of the Company's \$50,000

bond on file with the Commission.

Order No. 96-580, dated August 22, 1996, then directed Staff to issue the notice of hearing and to expand the notice to compel CWS to demonstrate at that hearing that it had complied with the Commission's findings and conclusions set forth in Order No. 96-524 related to the provision of adequate service through the purchase of water from another utility or municipality. The Company continued its initial agreement with West Columbia and continued to use the two inch interconnection with West Columbia, but the interconnection was never increased in size. Staff appropriately published the Notice in accordance with the Commission's Regulations.

Order No. 96-589 then established pre-filing deadlines and a hearing date of September 25, 1996, in this matter. Subsequent to the completion of the hearing, we determined that we would consider this matter after the hearings on Docket No. 96-235-W/S and Docket No. 96-259-W/S. The matter is now before us for decision.

The hearing of September 25, 1996, was held at 111 Doctors Circle in the Commission's hearing room at 10:30 a.m. The Honorable Guy Butler, Chairman, presided. Robert T. Bockman, Esq., represented CWS. Elliott F. Elam, Esq., appeared on behalf of the Consumer Advocate for the State of South Carolina (the "Consumer Advocate"). CCACW was not represented by counsel. Brenda Bryant appeared individually. Reginald I. Lloyd, Esq., appeared for the Office of the Attorney General for the State of South Carolina (the "Attorney General"). Catherine D. Taylor,

Staff Counsel, represented the Commission Staff. One public witness appeared and testified at this hearing.

Three parties of record presented witnesses in this matter. Keith Murphy, Regional Director Operations, appeared on behalf of the Company. Through his testimony, Mr. Murphy detailed the history of the CWS I-20 System, the water quantity and quality issues concerning this area, and the sequence of events that occurred in the I-20 system in May through July of 1996. Mr. Murphy stated that a supply problem existed in the I-20 area and that the Company had explored various solutions to remedy the situation.

Lawrence Schumacher, President of Utilities, Inc., parent company of CWS, also appeared on behalf of the CWS. Mr. Schumacher provided an overview of CWS's efforts to respond to customer expectations in the I-20 service area. He stated in his testimony that the Company should have done more to meet the customers' expectations. He felt that the Company's actions in this matter were not willful.

Robert G. Burgin, Jr., an outside consulting engineer for CWS, also testified for the Company. Mr. Burgin was involved in the design and permitting of the wells in the I-20 area. He submitted his "Brief Concerning Water Supply - I-20 Water System" to the Commission and offered testimony to explain and support the study. He stated that the study explained the system's demand and production and further demonstrated that the water system had sufficient capacity to meet the usage demands for the service area. Mr. Burgin's opinion of the West Columbia interconnect was

that it provided a safety margin for the system.

Brenda Bryant testified also. Ms. Bryant urged the Commission to forfeit CWS's bond since, as she alleged, the Company did not provide adequate service during the system shortage in early summer 1996 and since the Company had knowledge that it needed to repair the wells. Ms. Bryant further stated that CWS exhibited complete disregard to the Commission's authority, orders, and regulations. She elaborated upon the inconveniences encountered as a consumer due to the shortage.

Joe L. Rucker, Assistant Chief of the Bureau of Water of the Department of Health and Environmental Control's Environmental Quality Control Office, was subpoenaed by the Commission Staff. Mr. Rucker therefore appeared and provided testimony at hearing. Mr. Rucker described the history of the wells in the I-20 service area and the actions that DHEC has taken regarding the wells and CWS. Mr. Rucker testified that the filter media in the wells was not maintained adequately by the Company, that the Company did not employ enough operators to monitor the system and keep proper records, and that the Company could have had new media installed in the three wells by Fall 1995. Mr. Rucker also analyzed Mr. Burgin's report and the Company's records of the I-20 system. He found no leaks in the system, no problems with the sizes of the lines, no excessively high demands, and that the three off line wells provided over thirty percent (30%) of the water to the I-20 system. He was unable to explain why the study's numbers did not reflect the system's inability to meet demand during the summer. He testified that the wells were not producing the capacity

permitted for the wells or the quantity indicated in the Company's records. Mr. Rucker opined that the combined yield of the wells (without the three off-line wells) was insufficient to support the number of customers in the I-20 service area. Even with the three wells on line, Mr. Rucker stated that the system's capacity was marginally sufficient to serve the existing, but no additional, customers.

Charles Creech, Utilities Department, testified on behalf of the Commission Staff. Mr. Creech provided a procedural history of this docket. Mr. Creech testified that he believed, after viewing all information gathered, that the system would have failed in the time period concerned if not for the two inch emergency interconnect with West Columbia. In Mr. Creech's opinion, the two inch interconnect was a temporary measure to assist the system. He also stated that CWS was not diligent in putting the three wells back on line.

DISCUSSION

The issues in this matter for current consideration are:

(1) Whether Carolina Water Service, Inc., willfully failed to provide adequate and sufficient service in regards to the quantity of water available to customers within its I-20 service area without just cause and excuse;

(2) Whether such failure continued for an unreasonable length of time; and

(3) Whether Carolina Water Service Inc., complied with Commission Order No. 96-524 which ordered CWS to take immediate steps to provide adequate service through the purchase of water

from another utility or municipality in order to alleviate shortages and prevent future shortages.

The Commission is the constituted state agency authorized to hear and decide these matters. Pursuant to South Carolina Code Ann. §58-3-140 (Supp. 1995), the Commission is vested with the power and jurisdiction to supervise and regulate the rates and service of every public utility in this state. Carolina Water Service, Inc., is a "public utility" under the jurisdiction of the Commission.

S.C. Code Ann. §58-5-720 (Supp. 1995) is applicable in this matter. This section reads in part that the Commission has the right "to declare all or any part of the bond of certificate of deposit" that is filed by the Company with the Commission "forfeited upon a determination by the Commission that the utility shall have willfully failed to provide [adequate and sufficient] service without just cause and excuse and that such failure has continued for an unreasonable length of time."

All witnesses in this matter acknowledged and verified that the I-20 system experienced difficulties maintaining pressure in the time period concerned. Witness Rucker testified that pumps were running twenty-four hours per day and that the usual operational period is sixteen hours per day. Public witness testimony in related hearings indicated that pressure was low, that the water contained air due to "overpumping" by the system,

and that there were outages at times.¹ As well, the system's pressure dropped below the level required by the Commission's Regulations at least once.

We feel that in this case certain facts are established: the Company was aware as early as September 1995 that the I-20 well system had problems, that the system and particularly the three off-line wells required repairs in order to supply adequate service, and that the water supply of the entire system was significantly reduced by these three wells being off-line. CWS issued both voluntary and then mandatory restrictions on customer water usage in the I-20 area. Testimony also showed that DHEC warned CWS that the three wells needed to be operational by April 1996 in order to sufficiently supply the I-20 area in the subsequent summer months. The Company did not bring the wells back on line until August 1996. Threat of shortage, and possible system contamination, were imminent in the early summer of 1996, and CWS therefore issued voluntary and then mandatory curtailments to its I-20 system customers.

Due to the Company's knowledge of the problems, we are troubled that the situation progressed as it did in late May, June and July of 1996. CWS had months of opportunity to repair the wells and bring them back into production. Testimony was presented which evidenced that DHEC was working with the Company

1. Witness Rucker explained that outages had not been definitely confirmed. According to Mr. Rucker, outages often last for short periods of time. Inspectors must travel to consumers' homes to investigate complaints of outages. By the time the inspectors arrive, the pressure has often increased enough to supply water to the home.

to have the wells repaired. Yet, the record reveals that the three wells were not operational until almost one year after the time that DHEC originally notified CWS that problems existed with the wells. Company witnesses testified that they would act differently if the situation occurred again. In Company witness testimony and the Company's written comments submitted subsequent to the September 25, 1996 hearing, CWS attempts to portray DHEC as the cause of the delay of repairing the wells. We are not persuaded that DHEC's actions were causative of the delay. Mr. Rucker's testimony indicates that, although exchanges of technical information do occur in such situations, this situation was especially urgent. As testified by Mr. Rucker, DHEC worked with the Company to achieve a plan for repair of the system but did not receive complete plans for the system until Spring 1996.

In short, the Company failed to aggressively pursue putting the three wells back on line. Therefore, we feel that CWS did not fulfill its statutory duty to supply adequate and sufficient service to the I-20 area. The Company was forced to issue curtailment notices repeatedly to customers to conserve the supply in the system. CWS was aware that the hot weather and increased water usage of the summer season would impose increased usage on the system. This failure to provide an adequate water supply was done with a total disregard for the financial hardship imposed on the Company's customers as related to landscaping activities. The Company attributes the short supply to the customers' high demands (i.e., noncompliance with water usage restrictions). However, the Company's study submitted by Mr. Burgin did not exhibit any

unusually high demands of peak days on the system. If the system had failed, the emergency would have presented a tremendous health threat to the I-20 service area. We do not find any persuasive evidence of record to constitute "just cause and excuse" on the part of the Company to explain the failure of the Company to provide adequate and sufficient service. The Company's failure to repair the system continued for months prior to the shortage, and therefore we feel that the failure continued for "an unreasonable length of time." To date, since we determined that transfer of the system to the Town of Lexington was not in the public interest, CWS has not put in place any other long term solution.

Of concern to this Commission also is the "Brief" submitted on behalf of the Company. Although the study shows that, in calculations, the production and supply of the system are sufficient to meet the needs of the I-20 area and exceed the system's demand, it fails to state why indeed a shortage existed in the summer of 1996. We feel that, if the wells were producing as the study indicates, no low pressure situations would have existed as complained of by the customers, CWS would not have had to implement the curtailments on I-20 customer usage, and the emergency interconnect with West Columbia would not have been necessary. These conclusions support our feeling that adequate service was not being provided by the Company to its I-20 area customers.

We also are concerned with the Company's management. Testimony from Mr. Rucker showed that the wells were not being monitored properly and that adequate records are not being kept.

Proper management and maintenance of equipment and records are essential to providing adequate service to customers. The "economies of scale" theory seems to not affect CWS' rates, as we note from Commission tariffs that their rates are among the highest in the state. The Consumer Advocate has suggested a management audit to the Commission since Staff does not review these expenditures.

Therefore, based upon the testimony provided at hearing and the applicable law, the Commission has examined this matter and now makes the following conclusions and order as follows:

1. Carolina Water Service, Inc., willfully failed to provide adequate and sufficient service without just cause or excuse, and such failure continued for an unreasonable length of time in regard to the water provided to the CWS customers in the I-20 service area.

2. A management audit shall be conducted of Utilities, Inc. (parent company of Carolina Water Service, Inc.), of Water Service, Inc., of Carolina Water Service, Inc., and CWS' operations, as well as all overhead costs allocated to CWS customers. This management audit is to be funded by the revocation of the existing \$50,000 water bond currently on file with the Commission. The bond is forfeited pursuant to S.C. Code Ann. §58-5-720 (Supp. 1995). The audit is to be funded up to the amount of the existing water bond. Should the cost of the management audit exceed the amount of the water bond on file, the Commission will determine if the additional cost should be born by the Company or by the Commission.

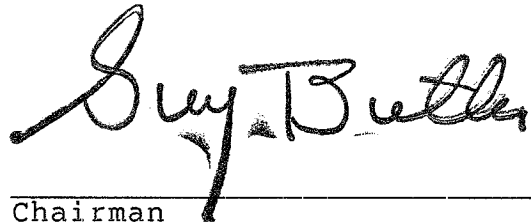
3. Pursuant to S.C. Code Ann. §58-5-720 (Supp. 1995) and 26 S.C. Code Ann. Regs. 103-712.3.1 (Supp. 1995) which require the filing of a bond with sufficient surety, Carolina Water Service, Inc. shall file with the Commission a performance bond in the amount \$50,000 to replace the current bond revoked herein.

4. Carolina Water Service, Inc., shall interconnect with the City of West Columbia through a four inch or six inch tap as soon as possible so as to provide a better quality of water to the CWS customers. This interconnect shall be made on the condition that CWS can obtain financial arrangements, as to the cost of water being purchased, equivalent to the exiting rates being paid to the City of West Columbia.


5. This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)